

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

CANDIE J. NELSON,

No. 05-10660

Debtor(s).

Memorandum re Dismissal

Debtor Candie Nelson has proposed a Chapter 13 plan providing for payments of \$50 per month for 36 months. Asked for an offer of proof as to what would justify such small payments for the minimum amount of time, her only response was that it was all she could afford. Based on this representation, confirmation must be denied and this case must be dismissed.


The court has almost never confirmed Chapter 13 plans calling for such minuscule payments, even absent other negative considerations. In this case, there are two negative considerations. First, her debts are so high¹ that dividing \$1800 amongst them makes their dividend microscopic. Secondly, and most importantly, Nelson's discharge was denied in a prior Chapter 7 case filed less than three years ago; all of the debts in this case were debts when that case was filed.

Section 523(a)(10) of the Bankruptcy Code provides that a debt is nondischargeable if it was scheduled or could have been scheduled in a prior case in which the debtor was denied a discharge. Thus, all of Nelson's debts are nondischargeable.

¹Nelson's eligibility to be a Chapter 13 debtor is subject to objection by the trustee, who argues that she is over the debt limits.

1 Factors to be considered in determining if a Chapter 13 plan should be confirmed include the
2 amount of payments, the percentage of repayment to unsecured creditors, and whether any of the debts
3 are nondischargeable. *In re Warren*, 89 B.R. 87, 89 (9th Cir. BAP 1988). In this case, since all of the
4 debts are nondischargeable and both the payments and the dividend are next to nothing, the plan cannot
5 be confirmed.

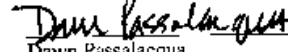
6 Dated: June 29, 2005

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9 Alan Jaroslovsky
10 U.S. Bankruptcy Judge
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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: Jun 29, 2005


Dawn Passalacqua
Deputy Clerk

Candie J. Nelson
1144 Irwin Lane
Santa Rosa, CA 95401